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TAGS: KISL, KPAO, PGOV, PREL, MOPS, PTER, KAWC,
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SUBJECT: PRESIDENT SIGNS EXECUTIVE ORDER
INTERPRETING COMMON ARTICLE 3 AND SETTING RULES FOR
CIA DETENTION PROGRAM

REF: 2006 STATE 164628

1. (U) SUMMARY. ON JULY 20, THE PRESIDENT SIGNED AN EXECUTIVE ORDER THAT (1) INTERPRETS FOR THE PURPOSES OF U.S. LAW AND THE SATISFACTION OF U.S. TREATY OBLIGATIONS, THE MEANING AND APPLICATION OF COMMON ARTICLE 3 OF THE GENEVA CONVENTIONS, AN ARTICLE THAT REQUIRES HUMANE TREATMENT OF DETAINEES; AND (2) PROVIDES CLEAR RULES FOR THE APPLICATION OF COMMON ARTICLE 3 TO THE CIA'S DETENTION AND INTERROGATION PROGRAM. THE ORDER COMPLIES FULLY WITH INTERNATIONAL LAW AND CREATES A SOUND LEGAL FRAMEWORK FOR THE TREATMENT OF DETAINEES BY THE CIA IN THE CONFLICT WITH AL QAEDA. THE ORDER IS AVAILABLE AT WWW.WHITHOUSE.GOV/NEWS/RELEASES/2007/07/20070720-4.HTML. IF-ASKED POINTS ARE IN PARA. 5. QS AND AS ARE IN PARA. 6. END SUMMARY.

2. (U) IN 2006, THE SUPREME COURT HELD THAT COMMON ARTICLE 3 OF THE GENEVA CONVENTIONS, WHICH REQUIRES HUMANE TREATMENT OF DETAINEES DURING ARMED CONFLICT AND PROHIBITS SPECIFIC ACTS OF MISTREATMENT, APPLIES TO THE U.S. ARMED CONFLICT WITH AL QAEDA. FOLLOWING THAT DECISION, CONGRESS ENACTED THE MILITARY COMMISSIONS ACT (MCA), WHICH INTERPRETED AND CRIMINALIZED THE MOST SERIOUS VIOLATIONS OF COMMON ARTICLE 3; PROHIBITED CRUEL,

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INHUMAN, AND DEGRADING TREATMENT OF DETAINEES; AND INVITED THE PRESIDENT TO PROMULGATE INTERPRETATIONS OF OTHER PROVISIONS OF THE GENEVA CONVENTIONS, INCLUDING COMMON ARTICLE 3 (SEE REF). CERTAIN TERMS IN COMMON ARTICLE 3, INCLUDING ITS PROHIBITION ON "OUTRAGES UPON PERSONAL DIGNITY, IN PARTICULAR, HUMILIATING AND DEGRADING TREATMENT," WHICH WAS NOT INCLUDED IN THE MCA, HAVE BEEN CONSIDERED VAGUE.

3. (U) WHEN HE SIGNED THE MCA INTO LAW IN 2006, THE PRESIDENT STATED THAT HE WAS CONFIDENT THAT THE MCA ENABLED A CIA DETENTION AND INTERROGATION PROGRAM TO GO FORWARD, CONSISTENT WITH APPLICABLE LAW ON HUMANE TREATMENT OF DETAINEES. IN THIS ORDER, THE PRESIDENT PROVIDES AN AUTHORITATIVE INTERPRETATION OF THE PROVISIONS OF COMMON ARTICLE 3 RELATED TO DETENTION AND INTERROGATION AND APPLIES THAT INTERPRETATION TO THE CIA DETENTION AND INTERROGATION PROGRAM. IN PARTICULAR, THE ORDER CLARIFIES THE MEANING OF "OUTRAGES UPON PERSONAL DIGNITY, IN PARTICULAR, HUMILIATING AND DEGRADING TREATMENT" BY EXPRESSLY FORBIDDING "WILLFUL AND OUTRAGEOUS ACTS OF PERSONAL ABUSE DONE FOR THE PURPOSE OF HUMILIATING OR DEGRADING THE INDIVIDUAL IN A MANNER SO SERIOUS THAT ANY REASONABLE PERSON, CONSIDERING THE CIRCUMSTANCES, WOULD DEEM THE ACTS BEYOND THE BOUNDS OF HUMAN DECENCY," INCLUDING SEXUAL ABUSE AND USING DETAINEES AS HUMAN SHIELDS. THIS STANDARD IS DRAWN FROM DECISIONS OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA.

4. (U) IN ADDITION TO THE PROHIBITION ON THOSE "WILLFUL AND OUTRAGEOUS ACTS OF PERSONAL ABUSE" DESCRIBED ABOVE, THIS ORDER CONTAINS A LIST OF PROVISIONS WITH WHICH THE CIA PROGRAM MUST COMPLY TO BE CONSISTENT WITH COMMON ARTICLE 3. THIS INCLUDES REQUIREMENTS THAT THE DETAINEES NOT BE SUBJECT TO TORTURE; CRUEL, INHUMAN, OR DEGRADING TREATMENT; OR ANY OFFENSE COVERED BY THE WAR CRIMES ACT. THE ORDER FORBIDS ACTS INTENDED TO DENIGRATE THE RELIGION OR RELIGIOUS PRACTICES OF THE DETAINEE, AND REQUIRES THAT THE CIA PROVIDE DETAINEES ADEQUATE FOOD, WATER, SHELTER, NECESSARY CLOTHING, PROTECTION FROM EXTREMES OF HEAT AND COLD, AND MEDICAL CARE. THE CIA IS AUTHORIZED TO DETAIN ONLY THOSE MEMBERS OR SUPPORTERS OF AL QAEDA AND ASSOCIATED ORGANIZATIONS THAT THE CIA DIRECTOR CONCLUDES ARE LIKELY TO HAVE INFORMATION THAT COULD ASSIST IN DETECTING, MITIGATING, OR PREVENTING TERRORIST ATTACKS OR LOCATING THE SENIOR LEADERSHIP OF AL QAEDA.

5. (U) BEGIN IF-ASKED PRESS POINTS.

-THE PRESIDENT ISSUED AN EXECUTIVE ORDER ON JULY 20 IN ORDER TO

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PROVIDE AN AUTHORITATIVE INTERPRETATION UNDER U.S. LAW OF COMMON ARTICLE 3 OF THE GENEVA CONVENTIONS AS APPLIED TO CERTAIN DETENTIONS AND INTERROGATIONS.

-OF MOST SIGNIFICANCE, THE ORDER DEFINES IN MORE EXPLICIT DETAIL SOME OF THE MORE VAGUE TERMS OF COMMON ARTICLE 3, DRAWING ON AND COMPLYING WITH INTERNATIONALLY-ACCEPTED STANDARDS FOR THE TREATMENT OF DETAINEES IN WAR. THESE STANDARDS DRAW IN PART FROM DECISIONS OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA.

-SPECIFICALLY, THE ORDER DEFINES "OUTRAGES UPON PERSONAL DIGNITY" TO MEAN A PROHIBITION ON "WILLFUL AND OUTRAGEOUS ACTS OF PERSONAL ABUSE DONE FOR THE PURPOSE OF HUMILIATING OR DEGRADING THE INDIVIDUAL IN A MANNER SO SERIOUS THAT ANY REASONABLE PERSON, CONSIDERING THE CIRCUMSTANCES, WOULD DEEM THE ACTS BEYOND THE BOUNDS OF HUMAN DECENCY," INCLUDING SEXUAL ABUSE AND USING DETAINEES AS HUMAN SHIELDS.

-IT BUILDS ON PREVIOUS STANDARDS OF DETAINEE TREATMENT THAT ALREADY EXIST IN U.S. LAW, INCLUDING CRIMINAL STATUTES FORBIDDING TORTURE AND VARIOUS OTHER ACTS OF VIOLENCE (SUCH AS MURDER, MUTILATION, SERIOUS BODILY INJURY, AND RAPE), AND THE PROHIBITION ON CRUEL, INHUMAN, AND DEGRADING TREATMENT IN THE MILITARY COMMISSIONS ACT AND THE DETAINEE TREATMENT ACT.

-THE ORDER SPECIFICALLY APPLIES THE INTERPRETATION OF COMMON ARTICLE 3 TO A CIA INTERROGATION PROGRAM FOR CERTAIN CAPTURED AL QAEDA TERRORISTS WHO HAVE INFORMATION ON ATTACK PLANS OR THE WHEREABOUTS OF THE GROUP'S SENIOR LEADERS.

-THE ORDER CONTAINS A LIST OF SPECIFIC REQUIREMENTS FOR THE CONDUCT OF THE CIA'S PROGRAM. FOR EXAMPLE:

-THE PROGRAM MUST COMPLY WITH THE PROHIBITION ON CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT IN THE DETAINEE TREATMENT ACT;

-THE ORDER FORBIDS ACT INTENDED TO DENIGRATE DETAINEE'S RELIGION OR RELIGIOUS PRACTICES;

-DETAINEES MUST RECEIVE ADEQUATE FOOD, WATER, SHELTER, NECESSARY CLOTHING, PROTECTION FROM EXTREMES OF HEAT AND COLD, AND MEDICAL CARE;

-INTERROGATION TECHNIQUES MUST BE DEEMED SAFE FOR EACH DETAINEE WITH WHOM THEY ARE USED; AND

-THE CIA DIRECTOR MUST ISSUE POLICIES TO ENSURE THAT THE PROGRAM OPERATES SAFELY, PROFESSIONALLY, AND IN ACCORDANCE WITH THE ORDER AND U.S. LAW.

END IF-ASKED PRESS POINTS.

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6. (U) BEGIN QUESTIONS AND ANSWERS.

-Q: DOES THE ORDER APPLY ONLY TO THE CIA, OR TO ALL AGENCIES?

-A: THE ORDER INTERPRETS COMMON ARTICLE 3 AND APPLIES THAT INTERPRETATION TO THE CIA PROGRAM. THE DEPARTMENT OF DEFENSE ALREADY HAS POLICIES IN PLACE TO REQUIRE THAT ITS PERSONNEL COMPLY WITH COMMON ARTICLE 3.

-Q: DOES THE ORDER PROHIBIT WATERBOARDING, SLEEP DEPRIVATION, AND HYPOTHERMIA?

-A: THE ORDER REQUIRES PROTECTION OF DETAINEES FROM EXTREMES OF HEAT OR COLD. IT DOES NOT ENUMERATE ANY SPECIFIC PROHIBITED OR AUTHORIZED PRACTICES. ALL INTERROGATION PRACTICES MUST BE IN COMPLIANCE WITH THE TERMS OF THE EXECUTIVE ORDER.

-Q: HAS THE CIA PROGRAM CHANGED AT ALL SINCE IT BEGAN TO OPERATE SEVERAL YEARS AGO?

-A: THE LEGAL LANDSCAPE HAS CHANGED IN SIGNIFICANT WAYS SINCE 2001. THE SUPREME COURT'S DECISION IN HAMDAN V. RUMSFELD LED TO THE APPLICATION OF COMMON ARTICLE 3 TO THE CONFLICT WITH AL QAEDA. AND IN THE MCA, CONGRESS MADE OTHER SIGNIFICANT CHANGES TO THE LAW THAT ARE REFLECTED IN THIS ORDER. THE CIA PROGRAM MUST COMPLY WITH THIS ORDER.

-Q: WHY DID THE PRESIDENT ISSUE THIS ORDER NOW?

-A: THE PRESIDENT ISSUED THE ORDER TO PROVIDE CLEAR DIRECTION ON THE INTERPRETATION AND APPLICATION OF COMMON ARTICLE 3 UNDER U.S. LAW, TO ENSURE THAT THE UNITED STATES UPHOLDS ITS OWN LAWS AS WELL AS ITS TREATY OBLIGATIONS IN ITS TREATMENT OF DETAINEES. THE MCA EXPRESSLY AUTHORIZED THE PRESIDENT TO TAKE THIS STEP. IT HAS TAKEN SOME TIME SINCE THE MCA BECAME LAW TO COME TO A CONCLUSION ABOUT HOW BEST TO ACHIEVE THIS OBJECTIVE. THE PRESIDENT MADE CLEAR LAST SEPTEMBER THAT A CIA PROGRAM FOR QUESTIONING TERRORISTS WOULD CONTINUE TO BE CRUCIAL TO OBTAINING LIFE-SAVING INFORMATION.

END QUESTIONS AND ANSWERS.

7. (U) MINIMIZE CONSIDERED.

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